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Joint UNCTAD/IMO Intergovernmental Group
of Experts on Maritime Liens and
Mortgages and Related Subjects
Eighth session
London, 9 October 1995
Item 3 of the provisional agenda

CONSIDERATION OF THE POSSIBLE REVIEW OF THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO THE ARREST OF SEA-GOING SHIPS, 1952

Note by the secretariat of UNCTAD

Submission by the International Ship Suppliers Association (ISSA) */

The attached text has been submitted by the International Ship Suppliers Association for consideration by the Joint Intergovernmental Group of Experts at its eighth session.

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IMO/UNCTAD
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Maritime Liens and Mortgages and Related
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Submission by the International Ship Suppliers Association (ISSA)

We deeply regret the need to present this submission setting out our dissatisfaction with the amendments submitted for consideration at the eighth session of this Committee, in London.

We would remind you that although the outcome of the Diplomatic Conference on Maritime Liens and Mortgages, in relation to the granting of Maritime Liens to ship suppliers, was an unsatisfactory compromise. Our right, however, to the arrest of vessels as stipulated in the 1952 Arrest of Sea-going Ships Convention was never challenged. Indeed, on many occasions during the sessions the majority of delegates expressed their complete satisfaction with this Convention, and this is well documented in the reports of the sessions.

In particular, document JIGE(W)3, one amongst many, where it deals with enforcement procedures, states clearly that, "**most representatives** were of the view that the 1952 Convention was **extremely satisfactory**, bearing in mind that it had been ratified by over 60 States". In the light of this, it was suggested that any decision to **align the terminology** of the 1993 Maritime Liens and Mortgages Convention to that of the 1952 Arrest of Sea-going Ships Convention should only be undertaken **after it became clear** that the new Convention met the needs of States (DOC LOG/MIN/13-TO/M/ACB/137).

This approach was reiterated until the final report of the work of the JIGE prior to the 1993 Diplomatic Conference on Maritime Liens and Mortgages (DOC FD/8/C/4/326 - TD/8/C4/AC8/26) and endorsed by its Chairman, Mr. Ivanov, at the end of the Conference who said that the recommendations of the JIGE must be respected.

These recommendations, endorsed by a large majority of States, and by the Chairman, are essentially:

(a) that the 1952 Convention on Arrest of Sea-going Ships is extremely satisfactory and not in need of any amendment;

(b) that all maritime liens should be included in article 1 of the 1952 Convention on Arrest of Sea-going Ships. Thereby enlarging this list but not altering the scope of claims already listed or the related procedures;

(c) that, if any revision was undertaken, it should be limited to the alignment of the terminology between the two Conventions and only undertaken when it became clear that it met the needs of States. In addition, it recommended that caution should be exercised in the wording of any proposed changes.

These caveats were expressed, not by the ship supplier category, but by the majority of delegates at the 1993 MLM Conference and are well documented by the official reports of the meetings.

A cursory examination, however, of the Chairman's report of the JIGE's seventh session, relating to the eventual amendment of the 1952 Arrest of Sea-going Ships Convention and the draft articles, shows that the proposals go well beyond a simple change in the terminology, particularly in article 3 - Exercise of right of arrest, and if approved, would in some areas totally change the spirit of the 1952 Convention.

In view of this, it is our intention to prepare a further submission setting out the consequences that any such amendments would have on our category and the maritime industry. In particular we wish to make the point that the implications of any changes are so complex and sensitive that discussion of them at this time, seems to us absolutely inappropriate, particularly in the light of the comment of the JIGE and attitude of States as detailed above.

It is also of concern to us, that at the last session of the JIGE it was agreed that the final draft of the 1985 Lisbon Conference of the CMI would be used as the basis for discussion. Well, here we must point out that the draft article 3 of the Lisbon draft postulates the opposite position to that adopted in the 1952 Convention.

This Convention was designed to give all creditors relating to the operations of ships, straightforward and simple procedures for the enforcement of the rules. It's success can be judged from the general consensus of agreement that it enjoys 50 years on. In contrast, the 1985 Lisbon draft did not achieve a general consensus of agreement from the maritime lawyers responsible for its drafting and agreement to the draft article 3 was only achieved at the very end.

This point is best validated by quoting from the report of the proceedings of the 1985 Lisbon Conference itself, which states that:

> "Article 3 is the article which has caused the most discussion and controversy. This is due to two points of view. On the one side is the opinion that the ship is the focal point of all transactions and it should therefore be possible to arrest ships where a maritime claim exists, regardless of who the owner is or whether he is liable for the claim or not. This view is based partly on practical considerations and partly on legal ones.
>
> On the other side the opinion is that the arrest of a ship for a maritime claim should only be possible if the claim is secured by a maritime lien, by a mortgage on the ship, or if the owner is personally liable for the claim". (Lisbon 1985, paragraph 134, article 3 - Exercise of right of arrest).

In discussions at the 1985 Lisbon Conference, "both at committee and sub-committee level, it proved impossible to find a majority for either of these views". (1985 Lisbon clause 93, page 136).

Finally, in his report of the 1985 Lisbon Conference, Professor Belingeri, whose professional and intellectual qualities are of the highest standing, states, "it is not advisable to prepare a final and definitive text when various other alternative solutions are proposed which lack the unanimous support of the parties involved. In these circumstances it is more helpful to draft an alternative text and expound the arguments both for and against".

In setting out the arguments above, we are not expressing our own ideas or wishes but merely setting out facts as they are laid out in the relevant documents. In doing this, it can be clearly seen that the wording in article 3 of the 1952 Convention on the Arrest of Sea-going Ships is the opposite to that proposed in the final draft of the 1985 Lisbon Conference and that this latter draft did not achieve a general consensus of agreement, but resulted in divided opinions amongst a gathering of erudite and expert maritime lawyers.

In the light of these arguments, it is recommended that:

(a) discussion of article 3 be postponed to a later stage to allow the effectiveness of the 1990 Convention on Maritime Liens and Mortgages, which has only been ratified by Monaco, Tunisia and Georgia, to be assessed;

(b) once this assessment justifies the need, the recommendation in the final draft of the Lisbon Conference be implemented and a paper be prepared setting out the alternative texts and expounding in depth the arguments both for and against.

It is considered that only by taking this stance will it be possible to obtain the large consensus, which is fundamental to the philosophy of IMO and UNCTAD, and ensure that there is no suggestion that the outcome has been determined by the coercion of an aggressive pressure group who wish to impose their own views, regardless of other opinions.